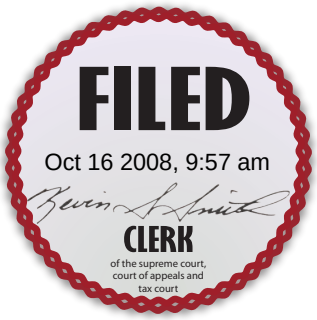

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IN THE
COURT OF APPEALS OF INDIANA

BRUCE L. WHITE, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0804-CR-249
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-9909-CF-243

October 16, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Bruce L. White, Jr. ("White") appeals following the revocation of his probation and the imposition of the remainder of his previously suspended sentence. We find that sufficient evidence was presented to support the probation revocation and that the trial court did not abuse its discretion in ordering him to serve the remainder of his suspended sentence. We therefore affirm the trial court.

Facts and Procedural History

In 1999, White pleaded guilty to Class B felony burglary and two counts of Class B felony criminal confinement. He was sentenced to concurrent terms of fifteen years with seven years suspended to probation. On May 16, 2006, the trial court determined that White had violated his probation.

On August 29, 2006, following a post-conviction court's finding that there had not been a juvenile waiver; the post-conviction court set aside White's convictions. White then pleaded guilty to Class B felony burglary, two counts of Class B felony criminal confinement, and Class A misdemeanor carrying a handgun without a license. White was sentenced to concurrent terms of fifteen years with seven years suspended on the Class B felonies and one year on the Class A misdemeanor. The post-conviction court found that White had already served his executed sentence and placed White on probation under the terms and conditions previously imposed.

On January 25, 2008, White attacked A.S. at a bar in Anderson. Specifically, White followed A.S. into the hallway leading to the bathroom. He then pushed A.S. up against the wall and began to kiss her. A.S. told White to get away from her, but White stuck his hand down A.S.'s pants and inserted a finger. A.S. tried to pull away but

White's finger caught on a piercing ring. A.S. felt a sharp pain and fled to find the police.

White and his friend were leaving the hotel where the bar was located when an Anderson police officer stopped them. A.S. identified White as the person who assaulted her. The officer also noted the odor of alcohol on White's breath.

On January 31, 2008, the probation department filed a notice of violation of probation alleging that White violated his probation by : (1) committing the new criminal offenses of Class D felony sexual battery, Class B misdemeanor public intoxication, and Class B felony criminal deviate conduct; (2) using an alcoholic beverage or illicit drugs; (3) violating curfew; and (4) knowingly associating with a convicted felon without just cause. Appellant's App. p. 18. Following evidentiary hearings on February 26, and 29, 2008, the trial court determined that White violated his probation by committing the new criminal offense of Class D felony sexual battery, failing to abstain from the use of alcoholic beverages, and violating curfew. Appellant's App. p. 9, 11. The trial court revoked White's probation and ordered him to serve five years of his previously suspended sentence. White appeals.

Discussion and Decision

White argues that the trial court abused its discretion when it determined that sufficient evidence existed that he violated his probation. A probation hearing is civil in nature, and the alleged violation must be proven by the State by a preponderance of the evidence. Braxton v. State, 651 N.E.2d 268, 271 (Ind. 1995). When reviewing a claim of insufficient evidence to support a trial court's decision to revoke probation, we will not

reweigh the evidence nor judge the credibility of witnesses. Id. We will consider all the evidence most favorable to the judgment of the trial court, and if there is substantial evidence of probative value to support the trial court's conclusion that a probationer has violated any condition of probation then we will affirm the decision to revoke probation. Id. We would note that proof of just one probation violation is sufficient to revoke a defendant's probation. Jones v. State, 689 N.E.2d 759, 761 (Ind. Ct. App. 1997). If an individual has violated a condition of probation at any time before the termination of the probationary period, the trial court may order execution of the sentence that was suspended at the time of the initial sentencing. Ind. Code § 35-38-2-3(g)(3) (2004 & Supp. 2007).

White does not contest the trial court's decision to revoke his probation for consuming alcohol and being out past curfew. White only argues that the trial court should not have found that he violated his probation for committing Class D felony sexual battery.

As noted above, the trial court may revoke probation if there is proof of just one violation. Jones, 689 N.E.2d at 761. Therefore, the probation revocation is supported by sufficient evidence concerning alcohol consumption and curfew violation. As to the trial court's finding that White also committed sexual battery, under the much lower standard of preponderance of the evidence, A.S.'s testimony is sufficient to support the trial court's finding. White's argument to the contrary is merely an invitation to reweigh the evidence and judge the credibility of the witnesses, and this we will not do.

Additionally, the trial court did not abuse its discretion when it ordered White to serve the balance of his previously suspended sentence. Indiana Code section 35-38-2-3(g)(3) permits the trial court to "order the execution of all or part of the sentence that was suspended at the time of initial sentencing." (emphasis added). The trial court chose to order execution of the entire suspended sentence and we will not second guess that decision.

Affirmed.

BAKER, C.J., and BROWN, J., concur.